Missouri compromise after he had already decided that the court had no jurisdiction over the case, — a kind of dictum never justifiable, highly injudicious in the existing state of politics, and doubly unfortunate in view of the fact that for once in his life Taney was fundamentally mistaken. Curtis kept above the excitement; the Chief Justice in his conscientious support of his own beliefs doggedly allowed his opinions to carry him beyond the case before him. Letters passed between the two in which Taney was decidedly crusty, Curtis always calm and dignified. Not long after this decision Curtis resigned from the bench, the small salary being insufficient for his needs. During the remainder of his life he was the leader of the Boston bar. In the winter of 1872–3 he gave a short course of lectures at the Harvard Law School. When President Johnson was impeached Curtis defended him and procured his acquittal, and afterwards when the President offered him the position of attorney-general he declined the office. Throughout his life honors had little attraction for him; he gave himself calmly and disinterestedly to the higher pursuit of the law.

RECENT CASES.

AGENCY — HIRING OUT SERVANTS. — Defendants, having many workmen in their employ, including plaintiff, hired them out to a contractor engaged in repairing a building. The latter took entire charge of them, but paid their wages to defendants, together with a bonus. Defendants later gratuitously loaned him some appliances to be used in the work. By reason of defects which defendants ought to have known about, but did not, plaintiff was injured. *Held*, that defendants are not liable. *Gagnon* v. *Dana*, 39 Atl. Rep. 982 (N. H.).

There are several cases which hold that where a master temporarily puts his servants entirely under the directions of an independent contractor, whether gratuitously or for hire, he ceases to be liable for their conduct, even though they continue to draw their wages from him. *Murray* v. *Currie*, L. R. 6 C. P. 24; *Murphey* v. *Caralli*, 3 H. & C. 462; *Wood* v. *Cobb*, 13 Allen, 58. There is more doubt who is responsible where property is hired out with the servants which they are to manage. *Laugher* v. *Pointer*, 5 B. & C. 547. The general rule applied in the cases first cited is founded in good sense, and its application, as in the principal case, to release the former master from his duty to the servants to furnish safe appliances, is demanded by logic and justice.

AGENCY — PARTIES TO A PROMISSORY NOTE. — A promissory note payable to the order of a bank was indorsed by the cashier in the form: "A. B., Cashier." *Held*, that the indorsee can maintain an action against the bank on the note. *Arnold* v. *Swenson*, 44 S. W. Rep. 870 (Tex., Civ. App.).

In the indorsement or making of a bill or note by an agent, it is the general rule that the name of the principal shall appear. It must also be indicated that the agent acted in behalf of the principal. *Rice* v. *Gove*, 22 Pick. 158. This rule arises from the negotiable character of bills and notes. They pass from hand to hand, and must not be ambiguous. The principal case illustrates an exception to this rule, and is, on grounds of expediency, settled law. By commercial understanding banks are known to carry on business in the names of their cashiers. The cashier's name is in fact an *alias* for the bank. *Bank of State of N. Y.* v. *Muskingum, etc. Bank*, 29 N. Y. 619. It seems, however, that no decision has yet gone so far as to hold effectual a signature in the name of the cashier without some designation of his office. 1 Morse, Banks, § 158.

AGENCY — RESPONDEAT SUPERIOR. — *Held*, that a public charitable hospital which does no business for profit is not liable for the negligence of its servants, provided it has used due care in their selection. *Ward* v. *St. Vincent's Hospital*, 52 N. Y. Supp. 466 (Sup. Ct., Trial Term, Part Four). See NOTES.

BILLS AND NOTES — OVERDUE PAPER. — The holder of paper payable to order discounted it with plaintiffs before maturity, but by mistake failed to indorse it. After maturity he indorsed it. *Held*, that plaintiffs, although they took without actual notice, are subject to equitable defences available against their indorser. *Lyon, Potter, & Co.* v. *First Nat. Bank*, 85 Fed. Rep. 120 (C. C. A., Eighth Cir.).

The reasoning of the court is plain. Before the indorsement plaintiffs had only the rights of assignees of an ordinary chose in action, and the indorsement after maturity would not cut off equities. Against this it may be argued with some force that the rule that previous equities are available against the indorsee of overdue paper is based on the fact that there is something suspicious in such a transaction, which ought to put the indorsee upon his guard, but that the reason for this rule entirely fails where the indorsee had before maturity acquired all the beneficial interest in the bill or note. *Watkins* v. *Maule*, 2 Jac. & W. 237, 244. See also *Grimm* v. *Warner*, 45 Iowa, 106. The great majority of courts, however, have not accepted this argument, but have held that the rule as to overdue paper, whatever its origin, is not now dependent on any theory of constructive notice, and is subject to no exceptions. *Haskell* v. *Mitchell*, 53 Me. 468; *Lancaster Bank* v. *Taylor*, 100 Mass. 18.

CONFLICT OF LAWS — MARRIED WOMEN — CHANGE OF DOMICILE. — A Frenchman and a Frenchwoman married in France. By the law of France, property acquired by the husband is community property. They afterwards changed their domicile to England, where the husband acquired a large fortune and died leaving a will, his wife surviving. *Held*, that the property is governed by French law, and the widow is entitled to one-half. *De Nichols* v. *Curlier*, [1898] 1 Ch. 403.

While it is the rule that property acquired ante-marriage is governed by the law of the matrimonial domicile, *Harral* v. *Harral*, 39 N. J. Eq. 279, it should be equally clear that the law of the place where the property is acquired after marriage governs its acquisition. In the principal case the husband acquired the property in England, where there is no law giving the wife an equal share. Under what law the parties were married appears to be immaterial. The decision departs from the sound rule that the effect of a transaction is governed by the law of the place where the transaction took effect. The opposite and apparently correct result has been reached in America. *Saul* v. *His Creditors*, 5 Mart. N. S. 569.

CONSTITUTIONAL LAW — CITIZENSHIP. — The defendant was born in California of Chinese parents there domiciled. He had returned to China and was refused readmission to the United States. *Held*, that as he was born subject to the jurisdiction of the United States, he is a citizen by the Fourteenth Amendment, and should be admitted. *United States* v. *Wong Kin Ark*, 18 Sup. Ct. Rep. 456. See NOTES, 12 HARV. LAW REV. 55.

CONSTITUTIONAL LAW — DELEGATION OF TAXING POWER. — A statute provided that in case of a vacancy in the local office, or failure of the local authorities of an incorporated town to levy taxes for schools, health, etc., the governor should appoint three residents of such town to levy such taxes as they deemed expedient for the above purposes. *Held*, that the statute is unconstitutional, as it is a delegation of the taxing power, which the legislature can delegate only to municipal bodies. *Inhabitants of Bernards* v. *Allen*, 39 Atl. Rep. 716 (N. J., C. A.).

The court rests its decision on "fundamental principles of constitutional law," and not on any peculiarity of the New Jersey Constitution. The authorities most relied on are three New Jersey cases, two of which decided that the municipal body to which the taxing power had been delegated could not itself delegate the power. The third case decided that the legislature could not impose the legislative function of taxation on the courts. These cases do not support the proposition that the legislature itself can only delegate its power in one way. It is commonly said that legislative power cannot be delegated. This is very vague, however, and in the absence of a special constitutional provision, it is hard to see by what authority a court can limit the power of the legislature to delegate its powers if the legislature keeps within the bounds of a reasonable exercise of its discretion. If the delegation of power cannot itself be reasonably called legislation, but amounts to a shirking of the duty of legislation, it would of course be bad. Tested in this way, the statute in the principal case could hardly be declared invalid. The question might be affected, however, by the view which a court held as to the general legislative power over municipal corporations. See *Bulkeley* v. *Williams*, 68 Conn. 131, and *Le Roy* v. *Hurlbut*, 24 Mich. 44.

CONSTITUTIONAL LAW — EMINENT DOMAIN — ADDITIONAL SERVITUDE. — *Held*, that an electric passenger railway, running on the highways through country towns,

imposes an additional burden on such highways, so as to require the consent of the abutting owners and compensation. *Zehren* v. *Milwaukee Electric Ry. Co.*, 74 N. W. Rep. 538 (Wis.).

The court say, that even conceding that the building of an electric road through city streets would not be an additional servitude, its construction on country highways would be. In *Bloomfield & Rochester Natural Gas Light Co.* v. *Calkins*, 62 N. Y. 386, the court suggested that a distinction might properly be drawn between laying gas pipes in city streets and laying them in country roads. Whatever may be the validity of the distinction in that case, it seems not to apply in the principal case. Country highways are as much subject to the right of passage as are city streets. On the general question see 12 HARV. LAW REV. 61.

CONSTITUTIONAL LAW — FOURTEENTH AMENDMENT — STATE REGULATION OF FREIGHT RATES. — A Nebraska statute prescribed by schedule such rates to be charged by railroads within the State, that the railroads represented by the appellees would have been forced to operate virtually without profit. *Held*, that the statute is invalid, depriving the companies of their property without due process of law within the meaning of the Fourteenth Amendment to the Federal Constitution. *Smyth* v. *Ames*, *Smyth* v. *Smith*, *Smyth* v. *Higginson*, 18 Sup. Ct. Rep. 418. See NOTES, 12 HARV. LAW REV. 50.

CONTRACTS — ASSIGNMENT OF WAGES. — A workman employed as a moulder assigned all the wages he would earn in a year from the company for which he was then working. He left the employ of the company for two months and then returned. *Held*, that wages earned after his return do not pass by the assignment. *O'Keefe* v. *Allen*, 39 Atl. Rep. 752 (R. I.).

The decision is based on the ground that there were two contracts of employment, and the assignment could not be effectual as to the second contract, for it would be the assignment of a mere possibility. This line of reasoning would apply to the whole assignment. The assignor was not employed for a year. He was at liberty to leave and was subject to discharge at any time. Under these circumstances the assignment at best would seem to be that of a possibility, but the case illustrates the common law antipathy to transactions of this character. The assignment ought to be effectual in equity, however, on the same principle that an equity attaches to after-acquired property under an equitable mortgage. If this is true, there is no insuperable objection to giving effect to it at law, as courts of law are now very liberal in protecting and giving effect to equitable assignments.

CONTRACTS — ASSUMPTION OF MORTGAGE DEBT. — Land was mortgaged to the plaintiff to secure a debt of $15,000. The mortgagor afterwards conveyed to the defendant, who promised to pay $10,000 of the mortgage debt, the mortgagor agreeing to hold him harmless as to the rest. The plaintiff sued and recovered the $10,000. *Held*, that he may still foreclose the mortgage. *Knapp* v. *Connecticut, etc. Co.*, 85 Fed. Rep. 329 (C. C. A., Eighth Cir.).

The reasons given for allowing a stranger to a contract to sue upon it are as many as there are decisions. In no jurisdiction, however, is the stranger considered a party to the contract. Hence there was no merit in the defendant's contention that the plaintiff, by suing, became bound by the mortgagor's promise to the defendant. Harriman, Contracts, 223. Indeed, it is the better doctrine that the mortgagee's right against the grantee, in this class of cases, does not rest upon this anomalous doctrine of contracts. By assuming the mortgage debt the grantee puts the mortgagor in possession of a new asset. The mortgagee, as a creditor of the mortgagor, is entitled to the benefit of this asset, and may reach it by a bill in equity. This additional right is independent of the one which the mortgagee already has against the land, and the latter is not released by the enforcement of the former. *Keller* v. *Ashford*, 133 U. S. 610.

CONTRACTS — RESTRAINT OF TRADE. — The defendant sold his business and goodwill to the plaintiff, and covenanted not to engage in the same business anywhere in the United States for twenty-five years. *Held*, that the covenant is against public policy and is void. *Lufkin Rule Co.* v. *Fringeli*, 49 N. E. Rep. 1030 (Ohio).

This case is *contra* to the current of modern decisions. It was formerly the law that a covenant in restraint of trade unlimited in space was void; *Mitchel* v. *Reynolds*, 1 P. Wms. 181; but changed conditions in business have required a modification of this rule, and it is now the prevailing doctrine that even a covenant unlimited in space may be enforced if it is reasonable, and no wider than is necessary to protect the interests of the covenantee. *Nordenfelt* v. *Maxim, etc. Co.*, [1894] App. Cas. 535; *Diamond Match Co.* v. *Roeber*, 106 N. Y. 473; *Cokdale, etc. Co.* v. *Garst*, 18 R. I. 484. The

modern tendency of the law is to allow freedom of contract in business transactions. If the buyer of a good-will requires unlimited space for the reasonable protection of what he has purchased, it is a sensible doctrine that the public is not injured if the seller is obliged to perform a contract which he has deliberately made and for which he has received adequate compensation. See 4 HARV. LAW REV. 128.

CRIMINAL LAW — COMPOUNDING A MISDEMEANOR. — The defendant was indicted for receiving money in return for a promise not to prosecute an offender against the liquor statutes. *Held*, that this is an indictable offence. *State* v. *Carver*, 39 Atl. Rep. 973 (N. H.).

Some confusion has existed on the question as to what misdemeanors the common law allowed to be compounded. It has been said that the composition of any misdemeanor, unless allowed by statute, is illegal. *Partridge* v. *Hood*, 120 Mass. 403. The English decisions, although not entirely consistent, do not support so broad a rule. *Fallowes* v. *Taylor*, 7 T. R. 475; *Kier* v. *Leeman*, 9 Q. B. 371. The court in the principal case appears to take the proper distinction. If the misdemeanor is of a very low grade, or if it is essentially in the nature of a private injury, its composition is of too little importance for the law to notice. However, if the offence is of a public nature, the public is sufficiently interested in the punishment of the offender to make the compounding indictable. 1 Bish., Cr. L., § 711; *Geier* v. *Leeman*, 109 Pa. St. 180. The principal case seems to have been correctly regarded as falling under the latter head.

DAMAGES — PARENT AND CHILD — PROSPECTIVE DAMAGES. — The two-year-old son of plaintiff was killed by the negligence of defendant. *Held*, that plaintiff can recover for his trouble and expense in caring for and burying the child, but cannot recover for prospective loss of services. *Southern Ry. Co.* v. *Covenia*, 29 S. E. Rep. 219 (Ga.).

The case follows what seems to be the settled rule in Georgia that no recovery can be had for prospective services, at least unless the child is capable of rendering services at the time of its death. *Allen* v. *Atlanta St. R. R. Co.*, 54 Ga. 503. New York and the majority of American courts hold that the parent is entitled to prospective damages although the child is too young to render service. *Cuming* v. *Brooklyn City R. R. Co.*, 109 N. Y. 95. The English decisions, on the other hand, overlook the parental relation entirely, and found an action for injury to a minor exclusively upon loss of service, and the parent has no action even for expenses incurred unless the child is old enough to render services. The New York rule would seem to be the true one, as the parent is entitled to the services of the child until his majority, and this should be taken into consideration in assessing damages.

EQUITY — ASSIGNMENT OF A CHOSE IN ACTION. — A non-negotiable chose in action was subject to an equity in favor of A, who was not one of the parties to the obligation. *Held*, that an assignee of the chose in action for value and without notice takes it discharged from the equity. *Williams* v. *Donnely*, 74 N. W. Rep. 601 (Neb.).

The authorities are in hopeless conflict on the question. The decisions *contra* confuse defences available by a party to the obligation with equities attaching thereto in favor of an outsider. *Ames* v. *Richardson*, 29 Minn. 330. An assignee can have no greater rights against the promisor than his assignor had. However, an assignee secures a legal right to bring an action in the name of his assignor. 3 HARV. LAW REV. 340, 341. The assignor cannot interfere, the transfer being complete. Therefore if the assignee has acted in good faith, he should acquire the right discharged from all equities except those which the promisor may plead in defence. *Starr* v. *Haskins*, 26 N. J. Eq. 414. The same principle is illustrated by *Dodds* v. *Hills*, 2 Hem. & M. 424. There a trustee of stock gave a power of attorney to a *bona fide* purchaser to secure a transfer of the stock on the books of the company. It was held, notwithstanding the objection of the *cestui que trust*, that the transfer might be made by the purchaser.

EQUITY — EQUITABLE MORTGAGES. — A trust deed purported to convey land as security for indorsements to be made by the *cestui que trust* named therein. The name of the grantee, the trustee, was omitted from the deed. In reliance on the deed the *cestui que trust* made the indorsements and was charged on them. *Held*, that, although the deed is inoperative at law, it is enforceable by the *cestui que trust* as an equitable mortgage. *Dulany* v. *Willis*, 29 S. E. Rep. 324 (Va.).

The deed was invalid at law because of the omission of the name of the grantee. However, it was apparent on the face of the deed that the grantor intended that this specific piece of property should operate as security for the valuable consideration which was advanced by the *cestui que trust*. In such a case there is an equitable mort-

gage, creating a lien on the property. Equity will not allow the transaction to fail, but will give effect to the manifest intention of the parties. In accord with the principal case is *Burnside* v. *Wayman*, 49 Mo. 356. Similar relief has been granted where a deed was left unsealed by mistake. *Dunn* v. *Raley*, 58. Mo. 134.

EQUITY — INJUNCTION TO RESTRAIN BREACH OF CONTRACT. — The plaintiff and the defendant were parties to a bi-lateral contract, the plaintiff agreeing to furnish his theatrical troop to act at the defendant's theatre for seven stated nights, and to furnish certain printing in advance; the defendant agreeing to furnish the theatre with equipments, attendants, house programmes, etc. The plaintiff furnished the printing, and was ready to perform the rest of his contract; but the defendant let the theatre to another party. On the plaintiff's application the lower court issued an injunction restraining the defendant, in effect, from hindering the plaintiff's company from making use of the theatre, from using, or allowing any other company to use, the theatre during the seven days, and from "refusing to furnish" the plaintiff with everything contracted for. *Held*, that the injunction was improper. *Welty* v. *Jacobs*, 49 N. E. Rep. 723 (Ill.). SEE NOTES.

EVIDENCE — TRIAL OF FACT WITHOUT A JURY. — *Held*, that the admission of improper evidence in a case tried without a jury is not a ground for reversal. *Bell* v. *Walker*, 74 N. W. Rep. 617 (Neb.).

The decision is in conformity with settled Nebraska authority, holding that the admission of immaterial and incompetent evidence in a trial without a jury is not reversible error if enough material and competent evidence was admitted to sustain the finding of the court. *Whipple* v. *Fowler*, 42 Neb. 675; *Willard* v. *Foster*, 24 Neb. 213. There is a dearth of authority on the precise point. The jury system is primarily responsible for the English law of evidence. The jury being an untrained and unskilled tribunal, it was necessary to lay down rules of exclusion which would result in presenting a clear and definite issue of fact; it was also necessary to exclude other evidence from consideration on account of the danger that it would be misused. The reasons for these excluding rules are not applicable when the court alone determines questions of fact, and the decision in the principal case commends itself strongly. The authorities, however, are probably *contra*. *Begg* v. *Whittier*, 48 Me. 314; *Hopkins* v. *Forsyth*, 14 Pa. St. 34; Hilliard, New Trials, § 40.

EVIDENCE — WILLS — DECLARATIONS AS TO UNDUE INFLUENCE. — *Held*, where a will is contested on the grounds of undue influence, a declaration by the testator, two days after making the will, that his wife and son made it, is admissible to show the mental capacity of the testator. *Ball* v. *Kane*, 39 Atl. Rep. 778 (Pa.). One judge dissenting.

It is a generally accepted rule of evidence that where undue influence is in issue, the mental capacity of the testator may be proved by his declarations subsequent to the making of the will. *Waterman* v. *Whitney*, 11 N. Y. 157. The majority of the court were of the opinion that the testator's declaration was admissible under this rule. But it seems that the evidence should have been rejected on the ground taken by the dissenting judge, that this declaration of the testator had no tendency to prove his mental capacity. And even though it be conceded that the declaration raises an inference as to his mental condition, the inference is too slight and conjectural to afford a ground for admitting the evidence, especially as there is great danger of the jury using it as proof of the fact of undue influence.

GARNISHMENT — RIGHTS UNDER A CONTRACT. — The defendant contracted with A to saw logs furnished by A for one year, payment by monthly instalments. After part performance, A was cited as garnishee in an execution issued against the defendant. *Held*, that such attachment covered all the claims of the defendant which might accrue under the contract as well as those already existing. *Fay & Egan Co.* v. *Ouachita, etc. Mills*, 25 So. Rep. 312 (La.).

The authorities draw a distinction between actual debts and possible future indebtedness. The former, including present debts payable in the future, are held subject to attachment under garnishment process, and the latter are excluded from its operation. *Balt. & O. R. R. Co.* v. *Gallahue's Admrs.*, 14 Grat. 563; *Coburn* v. *City of Hartford*, 38 Conn. 290; *Otis* v. *Ford*, 54 Me. 104. There can be no doubt that such is the correct interpretation of the statutes on this subject. In the principal case the court disregarded this distinction. The contingent future advantage to accrue to the defendant under the operation of the contract was in no sense a debt, and therefore should not have been reached by a garnishment process. Such, indeed, is the rule laid down in an earlier Louisiana case. *Maduel* v. *Mousseaux*, 29 La. Ann. 228.

INSURANCE. — ACCIDENTAL CAUSE OF DEATH. — *Held*, that where blood poisoning results from an abrasion of the skin of a toe by a new shoe, and death follows, the death is properly attributable to "bodily injuries effected by external, violent, and accidental means," within the meaning of an accident policy. *Western Commercial Travellers' Ass'n* v. *Smith*, 85 Fed. Rep. 401 (C. C. A., Eighth Cir.).

The decision turns upon the meaning given to the word "accidental." While the authorities clearly show that the word "accident" in an insurance policy is given a different signification from that in which it is commonly used, no entirely satisfactory definition of an accident has yet been found. A number of the better definitions are collected in *Lovelace* v. *Travellers' etc. Ass'n*, 126 Mo. 104. Perhaps the most definite conclusion that can be gathered from the decisions is that an injury is accidental when produced by some unforeseen, unintended, and violent agency. A case which naturally invites comparison with the principal one is *Baron* v. *U. S. Mutual Accident Ass'n*, 123 N. Y. 304, where it was held that death resulting from a malignant pustule, caused by contact with diseased animal matter, was not accidental. The finding of the court that the pustule was a disease, excludes the idea of a violent agency, and seems to be sufficient to distinguish the cases.

LEGAL TENDER — MUTILATED NOTE. — The plaintiff presented in payment of car fare a note, from the corner of which a piece about an inch square had been torn. The conductor refused the mutilated note and, upon the refusal of the plaintiff to make further payment, ejected him from the car. *Held*, that the railroad company is not liable in an action for damages for the ejection. *North Hudson County R. R.* v. *Anderson*, 39 Atl. Rep. 905 (N. J., C. A.).

The case rests on the ground that while a mutilated note may, by the rules of the Treasury Department, be redeemable, the holder of such a note cannot cast upon one, unwillIng to assume it, the burden of applying for its redemption. This is a sensible decision, and is distinguishable from the case of *New Jersey, etc. R. R. Co.* v. *Morgan*, 52 N. J. Law, 60, which was relied upon by the plaintiff. In that case a coin considerably worn, but still distinguishable as a coin which had been issued from the mint, was held to be a legal tender. The cases may be distinguished on the ground that the coin presented all the indicia of money, while the mutilated note did not.

MARINE INSURANCE — SPONTANEOUS COMBUSTION. — *Held*, that an owner of a vessel cannot recover insurance on his freight against loss by fire and perils of the sea, when the captain of the vessel was obliged to discharge part of the cargo of coal because of imminent danger of spontaneous combustion. *The Knight of St. Michael*, [1898] P. 30. See NOTES.

PERSONS — GUARDIAN DE SON TORT — PURCHASE OF WARD'S LAND. — One who, without legal appointment, assumed to act as a guardian to a person *non compos mentis*, purchased at a tax sale land belonging to the ward. *Held*, that he acquired no beneficial interest therein. *Town of Thornton* v. *Gilman*, 39 Atl. Rep. 900 (N. H.).

The case falls within the principle that whoever assumes to act as a fiduciary incurs all of the burdens and incapacities pertaining to a *de jure* occupant of the position. Perry, Trusts, § 245; Schouler, Domestic Relations, § 326. The application of this doctrine to guardians is well recognized, although cases upon the point are rare enough to be interesting. A more familiar instance is that of the executor *de son tort*. Of course, a guardian legally appointed would not be allowed to compete with the interests of the ward by purchasing the latter's land at a tax sale. The present decision, therefore, follows inevitably from the general principle as above stated.

PERSONS — MARRIED WOMEN — ALIENATION OF HUSBAND'S AFFECTIONS. — *Held*, where by statute a married woman is given the right to bring actions in her own name, she may maintain an action against one who wrongfully induces her husband to leave her. *Gererd* v. *Gererd*, 39 Atl. Rep. 884 (Del.).

The case affords a striking illustration of the way in which the harsh and unreasonable rule of the common law relating to married women has been swept away by courts and legislatures. A different decision, however, has been reached in several of the jurisdictions where the tendency in general is to place a strict construction upon the statutes enlarging the rights of married women. *Duffies* v. *Duffies*, 76 Wis. 374. The more reasonable view and that supported by the great weight of authority, is in accord with the principal case. Cooley, Torts, 2d ed. 228. The injury resulting from the alienation of affections is the same whether it affects the husband or the wife, and all that stood between the wife and her right of action at common law was the legal fiction that the husband and wife are one. Where a statute removes the disability which is founded upon this fiction, there seems to be no satisfactory reason against allowing the action.

PLEDGE — NEGOTIABLE PAPER. — A bank made a pledge of negotiable paper, which it agreed to hold as agent for the pledgee. There was no actual transfer of possession. *Held*, that the pledge is valid even as against creditors of the bank. *Matthewson* v. *Caldwell*, 52 Pac. Rep. 104 (Kan., Sup. Ct.). See NOTES.

PROCEDURE — VERDICTS — SEPARATION OF JURY. — By consent of the prisoner and prosecuting attorney and by direction of the court, the jury gave to their foreman a sealed verdict, and separated for several hours before returning this verdict. *Held*, that this is reversible error. *State* v. *Mason*, 52 Pac. Rep. 525 (Wash.).

The practice as to the separation of jurors after sealing a verdict differs in this country. If such separation is by consent of parties or direction of the court, it is almost universally held unobjectionable in civil cases. In only a few jurisdictions is it allowable in criminal cases, under any circumstances. As a sealed verdict cannot be changed, and permission to separate is conducive of promptness in the rendition of verdicts, it seems that such permission, in the discretion of the court, should be allowed in criminal cases. *State* v. *Engles*, 13 Ohio, 490; *Sanders* v. *State*, 2 Iowa, 230.

PROPERTY — CHATTEL MORTGAGE — RIGHTS OF ASSIGNEE. — A gave a chattel mortgage to B, and later one on the same property to C, the latter agreeing with B that B's mortgage should have priority. C, however, filed his first and immediately assigned it to D, a *bona fide* purchaser for value. *Held*, that B has a first lien as against D. *David Stevenson Brewing Co.* v. *Iba*, 49 N. E. Rep. 677 (N. Y.).

The fact that this question arises in New York shows the persistent opposition of the legal profession to the New York doctrine as to latent equities, namely, that an assignee of a chose in action takes it subject not only to equities in favor of the obligor and subsequent parties, but also to those in favor of outsiders. The doctrine is wrong on principle, but seems firmly established in New York. *Greene* v. *Warnick*, 64 N. Y. 220. The principal case carries the application of it to an unfortunate extreme. The court cites in support of its ruling *Decker* v. *Boice*, 83 N. Y. 215, but the passage referred to is only a *dictum*, and moreover is founded on the special provisions of the statute as to the recording of conveyances of real estate. Under any reasonable interpretation of the statute requiring the filing of chattel mortgages, B's mortgage, being unrecorded, would be wholly void as to D, and to give effect to the agreement between B and D is to provide a very easy method of evading the registry laws.

PROPERTY — COMMON-LAW COPYRIGHT. — *Held*, the distribution of a book among the public generally, or those who choose to subscribe for it under certain terms, though it is not sold but only let for a term under restrictions as to its use, amounts to such a publication as will deprive the author of his common-law right of literary property in its contents. *Jewellers' Mercantile Agency* v. *Jewellers' Weekly Publishing Co.*, 49 N. E. Rep. 872 (N. Y.).

PROPERTY — DEEDS — DELIVERY — TRUSTS. — A deed sought to convey property to A on certain trusts. The deed was sealed and recorded, but there was no further evidence of delivery. The trustee never accepted the trust. *Held*, that the beneficiary cannot enforce the deed against the grantor or his representatives. *Loring* v. *Hildreth*, 49 N. E. Rep. 652 (Mass.).

According to the settled law of Massachusetts, the fact of recording is not conclusive evidence of delivery. *Maynard* v. *Maynard*, 10 Mass. 456. Consequently, the deed was at law a nullity, and the grantor was never divested of his title. The case, therefore, was very properly treated as falling within the principle that equity will not compel a donor to complete an imperfect gift. If, however, the court had found a valid delivery, the trust should have been enforced against the grantor, notwithstanding the trustee's disclaimer. *Adams* v. *Adams*, 21 Wall. 185. The distinction is that where the deed is properly delivered, the title rests immediately in the trustee without acceptance and even without his knowledge. A perfect trust having been thus created, it will not be allowed to fail even though the trustee by his disclaimer thrusts the title back on the grantor.

PROPERTY — EQUITABLE CONVERSION — RESULTING TRUSTS. — Land was devised to X upon trust to sell and to divide the proceeds between testator's two children. One of the latter died during the lifetime of the testator. *Held*, that the lapsed share of the deceased child results to the heir of the testator and not to his next of kin. *In re Rudy's Estate*, 39 Atl. Rep. 968 (Pa.).

The case is undoubtedly law, and is simply a reiteration of the doctrine of *Ackroyd* v. *Smithson*, 1 Bro. C. C. 503. Ever since that leading case, it has been uniformly held that where the purposes of a conversion partially fail, the trust results to the heir or next of kin according to the nature of the property in its unconverted condition.

Nowadays the question is not so frequently raised in the United States because of the prevalence of statutes assimilating intestate succession in the cases of real and personal estate.

PROPERTY — FIXTURES — MORTGAGOR AND MORTGAGEE. — A executed a mortgage to plaintiff on a factory and the machinery therein, but it was filed as a real-estate mortgage only. A became bankrupt, and the plaintiff sued to foreclose against defendant, A's assignee. *Held*, that the mortgage operated as a chattel mortgage on the machinery, and being unrecorded is void as to creditors of the mortgagor. *Sheldon* v. *Wickham*, 50 N. Y. Supp. 314 (Sup. Ct. App. Div., Third Dept.). Two judges dissenting.

The majority of the court felt bound by *Stephens* v. *Perrine*, 143 N. Y. 476; but this case only decided that the failure to file a chattel mortgage renders it void as to creditors. The court in the principal case assumed that the machinery was personal property as between mortgagor and mortgagee. This may be open to doubt. The law in England is certainly the other way, *Holland* v. *Hodgson*, L. R. 7 C. P. 328, and the English view has generally been followed in this country. *Ottumwa Woolen Mill Co.* v. *Hawley*, 44 Iowa, 57. In Massachusetts, however, the decisions seem to agree with the principal case. *Gale* v. *Ward*, 14 Mass. 352; but see *Pierce* v. *George*, 108 Mass. 78. The machinery in question seems to have the essential qualities of a fixture, and it is difficult to see how the case can be supported.

PROPERTY — POWERS. — A testator devised his estate to his widow for life, with power to sell or dispose of it for her support. She did not exercise the power. *Held*, that the estate is not liable for debts incurred by her for her support. *Ryon* v. *Mahan*, 39 Atl. Rep. 893 (R. I.).

The case is clearly right. It bears some points of resemblance to the leading case of *Jones* v. *Clifton*, 101 U. S. 225. In that case a husband gave several parcels of land to his wife, reserving to himself a general power of appointment. It was held that this power was not available to his creditors. Powers are purely personal, and while a power may make the donee potentially dominus of the property, he cannot be compelled to exercise it. If he fails to do so, creditors have nothing to which they can attach a claim.

PROPERTY — PRESCRIPTION — EMINENT DOMAIN. — A railroad entered upon and occupied land without the owner's consent. In an action of ejectment by the owner, *held*, that as the company could obtain a right of way by virtue of its right of eminent domain, it could not acquire such an easement by prescription, even though its original entry was not in the exercise of its right of eminent domain. *Narron* v. *Wilmington & W. R. R. Co.*, 29 S. E. Rep. 356 (N. C.).

The ground of decision is apparently that the possession of the company was not adverse. It is held generally that a railroad company entering on land without the owner's consent, or without the proper exercise of its charter privileges, is a trespasser. 2 Wood, Railroads, § 247. There seems to be no reason, therefore, why its possession should not be considered adverse so as to give title if continued for a sufficient time. There appears to be no authority on the point, however.

TORTS — LIBEL PER SE. — The defendant company falsely published of the plaintiff: "The General's bride is a dashing blonde, said to have been a concert-hall singer and dancer at Coney Island." It was alleged and proved that these were places of notoriously evil resort. *Held*, that the imputation is libellous per se. *Gates* v. *N. Y. Recorder Co.*, 49 N. E. Rep. 769 (N. Y.). See NOTES, 12 HARV. LAW REV. 57.

TORTS — NEGLIGENCE — PLAINTIFF'S ILLEGAL ACT. — The deceased, while travelling on Sunday in violation of a statute forbidding travel on that day, was killed at a crossing by the negligent operation of the defendant's train. In an action by the next of kin, *held*, that the violation of the statute by the deceased is no bar to the recovery. *Boyden* v. *Fitchburg R. R. Co.*, 39 Atl. Rep. 771 (Vt.).

The decision is supported by the weight of authority in this country, and seems to represent the correct view. The mere fact that a person is travelling on a day when travel is illegal cannot be said to contribute in any degree as the cause of damage resulting from the negligence of another. *Sutton* v. *Town of Wauwatosa*, 29 Wis. 21.

TORTS — OBSTRUCTION OF HYDRANT — *Held*, that one who obstructs the use of a city hydrant by firemen is liable to one whose property is damaged by fire in consequence thereof. *Kiernan* v. *Metropolitan Construction Co.*, 49 N. E. Rep. 648 (Mass.). See NOTES.

TRUSTS — CESTUI BARRED BY THE STATUTE OF LIMITATIONS. — The trustee wrongfully conveyed the trust property, and the grantee with notice held for the

statutory period. *Held*, that as the trustee is barred from recovering the property in equity by analogy to the Statute of Limitations, so are the *cestuis que trust* barred, though they were infants or not yet born at the time of the wrongful conveyance. *Willson* v. *Louisville Trust Co.*, 44 S. W. Rep. 121 (Ky.). See NOTES.

TRUSTS — DEDICATION FOR PUBLIC USE — PARTIES. — Land was conveyed by deed to the selectmen of a town for use as a public park only. A bill in equity was brought by the grantor to restrain the erection of a school building upon the lot. *Held*, that such a use is inconsistent with the terms of the trust and the bill will lie. *Rowzee* v. *Pierce*, 23 So. Rep. 307 (Miss.).

If land is dedicated to public use without a deed, it is the general doctrine that the dedicator grants an easement only. He retains the soil for every purpose not inconsistent with the public easement, and may maintain appropriate actions for any encroachment upon it. *St. Mary's* v. *Jacobs*, L. R. 7 Q. B. 53; *Bliss* v. *Ball*, 97 Mass. 597. But when the dedicator parts with the fee it is difficult to see what interest he retains in the land, and as in the case of a charitable trust the Attorney-General would seem to be the proper party to represent the rights of the public. However, as in the principal case, it is generally held that the grantor still has such an interest as to entitle him to enforce the trust as originally declared. *Warren* v. *Lyons City*, 22 Iowa, 351; *Gilman* v. *Milwaukee*, 55 Wis. 328.

REVIEWS.

TOWNSHIP AND BOROUGH; being the Ford Lectures delivered in the University of Oxford, 1897. By Frederic William Maitland, LL. D. Cambridge [Eng.]: University Press. 1898.

In these lectures Professor Maitland renews his investigations into the history of boroughs and of the land laws, dealing especially with the legal ownership of the common waste in a borough like Cambridge, which was in no one's lordship. He establishes successfully, with the charm of style no other writer on English law possesses, that one can hardly find ownership in such land apart from the right of users; that the grant of the town of Cambridge by King John to its burgesses did not convey a property right in common or waste; that where aggregate ownership can be predicated one cannot distinguish common from corporate ownership; and that when, in 1803, the common arable fields of Cambridge were to be inclosed, there were really no owners of the balks and waste. As he sums up his thesis, "it is exceedingly hard to disengage those elements of property and rulership which are blent in the medieval *dominium*, and to unravel those strands of corporateness and commonness which are twined in the medieval *communitas*."

These lectures are more than usually full of striking and epigrammatic suggestions. Of the fiction — if, as he doubts, it is a fiction — of corporate ownership, the author truly says that we must not regard the fiction as the work of lawyers. "The lawyer is not the motive force, but the drag on the wheel, and must protest that the layman is (if you please) 'feigning' more rapidly than the law will allow. It is not the lawyer, but the man of business, who makes the mercantile firm into a person distinct from the sum of the partners. It is the layman who complains that the club cannot get its club-house without 'some lawyer's nonsense about trustees.'" "Law sees differences of kind where nature has made differences of degree." "Explorations in foreign climes may often tell us what to look for, but never what to find." "The man who is reaping his acre-strip will be able to enjoy some of the forthcoming bread and beer;